

DEPARTMENT OF STATE REVENUE

02970324.SLF

FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 97-0324

Income Tax

For The Period: 1995

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration--Penalty

Authority: IC 6-8.1-6-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the imposition of a negligence penalty.

STATEMENT OF FACTS

The taxpayer is a steel corporation. In the first quarter of 1996 the parent company of the taxpayer changed the taxpayer's tax advisors. In previous years the tax advisors calculated and prepared the taxpayer's extensions. Since the taxpayer switched accounting firms during the period when the extensions were due, the taxpayer prepared its own extension for the tax year ending December 31, 1995. Under IC 6-8.1-6-1(a) and 6-8.1-6-1(c) a person filing a tax return may be granted an extension. Even if granted an extension, under IC 6-8.1-6-1 ninety percent (90%) of the Indiana income tax that is reasonably expected to be due on the due date must be paid. The taxpayer failed to comply with IC 6-8.1-6-1, and the Department imposed a penalty.

I. Tax Administration--Penalty

DISCUSSION

The Department can impose a ten percent (10%) negligence penalty under IC 6-8.1-10-2.1. This code section states, in pertinent part, that if "the deficiency determined by the Department was due to reasonable cause and not willful neglect, the Department shall waive the penalty." Further, 45 IAC 15-11-2 states that "negligence on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

The taxpayer argues that it has in the past diligently paid and filed its Indiana income taxes on time. The taxpayer argues that the "inadvertent" miss of a payment was due to reasonable cause and not due to willful neglect. The taxpayer notes that it was the parent company, not the taxpayer itself, that chose to switch tax advisors. The taxpayer also notes that it has experienced a reduction in the workforce, with current employees having a larger scope of duties. The taxpayer argues that these two factors coupled together caused the miss of the payment--since the taxpayer was forced to do the work in-house and did not have the resources to do it.

The Department notes that even if the taxpayer's argument is accepted, *arguendo*, nevertheless the taxpayer is still responsible. The Department finds that the taxpayer cannot abdicate responsibility for compliance by blaming its alter-ego, the parent company. The Department contends that decisions made by the taxpayer, whatever their source, must be viewed as decisions made by the taxpayer. The intra-corporate decision making structure of the taxpayer has no bearing on the taxpayer's duty. It was still the taxpayer's decision to switch advisors and reduce the workforce. Given that, the Department finds that even if the taxpayer's argument is accepted, it still fails to show that the taxpayer used reasonable care, caution, or diligence, in complying with the law.

FINDING

The taxpayer's protest is denied.